

February 4, 2015

HB304: Revising laws governing encroachments...

Introduced by: M Tropa

While I would agree that the issue of public and private access needs to be clarified, this bill does not do that.

As you heard the other day, there is a process already in place by which a road becomes a County and/or public road.

The underlying problem with access is that many people think that all roads are County roads, but they are not. This bill only addresses roads that have gone through the process.

A line on a forest service map, a plat, or a certificate of survey is not sufficient to create a County road.

I know of several cases in my subdivision where Lewis & Clark County has not been prompt in dealing with cases of encroachments. In one case, the County knew about delineators on a roadside for 5 1/2 years before one day they demanded instant removal. In another instance, they were notified of fences in an easement 18+ months ago and have yet to do anything. If they allow suspected encroachments to exist for months or even years, they should not then have the right to demand immediate removal or start imposing fines.

This bill is not clear as to when the fine starts accruing, such as when the County receives a complaint, when they investigate, when they notify the person responsible, etc.

This bill asks for an excessive increase in the daily penalty.

There is also nothing in this bill or statutes that allows the landowner (if the landowner installed the gate) to recover costs, such as time, attorney fees, loss of use, etc. if he or she prevails in proving they have the right to install a gate.

Since this is a road issue and would involve road department personnel, any fines should be paid into the road fund, not the general fund.

If the public or County wants access to property, they should follow established procedures to determine access before a gate is installed.

As written, this bill is very one sided and will do nothing to solve the underlying problem.

For the above reasons, I oppose this bill and urge you to vote no on it.

Thank you,
Cindy Swank
Helena, MT 59602

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Major opposition points:

- A County must first prove that the road is a County Road, as defined in MCA 60-1-103 and created as such in MCA 7-14-2101.
- Including the phrase "a locked gate" is unnecessary. A person so inclined would simply use something else.
- An act of nature, such as a rock slide or fallen tree is not the responsibility of the landowner to remove.
- Nothing in the current statutes or in this bill states at what point the penalty would start to accrue.
- This bill does not provide for landowner compensation for attorney's fees, costs, loss of use, damage, etc. in the event the landowner (if the landowner installed the gate) prevails.
- This is an excessive increase and is meant to be overly punitive and is a way for the County to generate funds.
- This pertains to roads and use of the road department personnel, so any monies collected through fines or penalties should go into the road fund.